89-178

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CAROL SNOW AND BRAHM HARPER,
Petitioners,

v.

THE COUNTY OF LOS ANGELES
THE PUBLIC ADMINISTRATOR OF
THE COUNTY OF LOS ANGELES
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION THREE

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(ASSOCIATE COUNSEL: ANN SMITH)

ATTORNEYS FOR PETITIONERS

I. Questions Presented

1. Should this Court in a practical legal application, define on a national basis (under Section 1 of Article XIV), the hard-won lessons of the causes of Operation Greylord defined by the Special Commission on Administration of Justice in Cook County as arising from " ... deviant ways of operating ... [of] ... local legal culture ... workgroups ... "

2. Does the Los Angeles County Counsel, as the attorney representing both appellant and respondent in the same appeal(s), have a right to dismiss appeal(s) so as to cause Social Security monies to be payable to a disputed heirship claimant, pursuant to a private understanding with such heir where the County of Los Angeles benefits

financially from agreeing to dismiss to cause payments by a Federal agency.

3. Does this petition present a suitable factual vehicle to apply the findings of the Cook County Special Commission [to all court systems of the United States, as basic rights of the citizenry everywhere under Section 1, Article XIV] so as to prevent Greylord type abuses from coming into existence by defining nationally the procedures which identify deviant local legal cultures?

4. Was an Order of Dismissal of Appeals void under Section 1, Article XIV as a result of "Greylord-type abuses" as defined by Cook County Special Commission Chairperson Jerold Solovy (" ... ex parte communication ... by rote and habit ... ")

(" ... local legal culture ... workgroups can develop highly deviant ways of operating ... ") where Federal jurisdiction can also be predicated on the fact it is reasonable to conclude nation-wide " ... local ... workgroups" strike similar "deviant" bargains which cost the Federal government scores (if not hundreds) of millions of dollars by agreeing to local adjudications that use the premise of Social Security monies to solicit cooperation to the financial benefit of various "workgroup" members.

II. LIST OF PARTIES

The title of the cause is misleading. The appeals dismissed were filed by Carol Snow (as administratrix of

the estate of William Harper) from two separate judgments in a wrongful death action of a Superior Court trial court. One judgment adjudicated heirship in a form so as to determine Social Security benefits. The other judgment adjudicated the County was not liable in a wrongful death claim. After filing of the notices of appeal by Carol, the Los Angeles County Counsel (already the attorney for respondent and defendant Los Angeles County in the wrongful death action) (A-3) had its client, the County Public Administrator, substituted as appellant in place of Carol Snow (A-4)--so Los Angeles County Counsel DeWitt Clinton now also represented the appellant (A-4). The County Counsel then moved for the dismissal of the appeals (originally filed

by Carol) on behalf of both appellant Public Administrator and respondent County of Los Angeles. Petitioners objected, starting at the Trial Court level, to this dual representation as a violation of Article XIV and improper professional practice. Thus:

The respondent is the County of Los Angeles represented by Los Angeles County Counsel DeWitt W. Clinton. (A-3)

The "appellant" of record (A-4) is the Public Administrator of the County of Los Angeles as administrator of the Estate of William Harper, represented by Los Angeles County Counsel DeWitt W. Clinton.

The Objectors are:

Objector Carol Snow (herein "Carol") who filed the appeals dismissed of 11/16/86

and 2/23/87 (as administratrix of said estate). Carol has in a timely manner appealed her order of removal and timely objected (including under Article XIV) (starting at the trial court level) to all procedures of County Counsel to dismiss the appeals.

Objector Brahm Harper (herein "Brahm") son of Carol and decedent William Harper. His Social Security rights (and heirship rights) were changed by the Judgment of 2/9/87 determining heirship (appealed 2/23/87).

Also served as parties of interest:

The Supreme Court of the State of California.

The Court of Appeal of the State of California.

The Superior Court of the State of California

Deborah Harper by her Attorneys of Record.

Zon Harper by his Attorneys of Record.

Other parties as shown on the Affidavit of Service.

TABLE OF CONTENTS

of Justice in Cook County.

2. This Petition presents a suitable factual vehicle to apply to all Court systems, the findings of the Cook County Special Commission on how " ... local legal cultures ... develop highly deviant ways of operating" since the citizenry of all local judicial systems, just as the residents of Cook County, have their Article XIV privileges and immunities and equal protection and due process rights violated by permitting local legal cultures even to start developing procedures now clearly recognized in Cook County as improper.

3. Greylord was made necessary by countless deviations (over scores of years) of Cook County public officials, each of which passed unchallenged, in part because

it was dangerous to challenge the system. A journey of a thousand miles begins with a singe step, which these facts permit now to be taken.

4. The Los Angeles County Counsel, (as attorney representing both appellant and respondent in the same appeal(s)), has acted improperly under Federal law in dismissing appeal(s) so as to cause Social Security monies to be payable to a disputed heirship claimant, pursuant to a private understanding with such heir where the County of Los Angeles benefits financially from agreeing to dismiss to cause payments by a Federal agency

CONCLUSION 30

APPENDIX A includes:

A-1 Order of Supreme Court of California of May 3, 1989. Denied Petition for Review of Order of 2/10/89.

A-2 Order of Court of Appeal of 2/10/89. Granted Motion to Dismiss of County Counsel DeWitt Clinton representing appellant and defendant.

A-3 Motion to Dismiss of respondent County of Los Angeles (by County Counsel)

A-4 Motion to Dismiss of "appellant" Public Administrator (by County Counsel)

A-5 Article in Harvard Law School Bulletin (Autumn, 1987). By Solovy and Kaufman. Re: Greylord.

A-17 Report of Special Commission on Administration of Justice in Cook County (Re: Ex Parte Communications). (1984)

TABLE OF AUTHORITIES

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CAROL SNOW AND BRAHM HARPER,
Petitioners,

v.

THE COUNTY OF LOS ANGELES
THE PUBLIC ADMINISTRATOR OF
THE COUNTY OF LOS ANGELES
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION THREE

Petitioners Carol Snow and Brahm Harper respectfully pray a writ of certiorari issue to review the judgment of

the Supreme Court of the State of California entered May 3, 1989 denying without opinion their timely Petition for Review of the Order of 2/10/89 of the Court of Appeal of the State of California (Second Appellate District) (Division 3) stating "Motion to Dismiss Appeal Granted, Appeal Dismissed."

OPINION BELOW

There was no opinion by the Supreme Court or Court of Appeal.

JURISDICTION

Jurisdiction is involved under Article XIV of the United States Constitution. Also under 42 USCA inclusive (re Social security benefits) in that the effect of the dismissal of the two appeals

is to adjudicate (under the judgement appealed from of 2/9/87) a Federal Social Security benefit to a putative spouse (42USCA 416) and to decrease a Social Security benefit to two children, including Objector Brahm.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Article XIV. Section 1.

STATEMENT OF THE CASE

CRITICAL FACTS

Both Appellant and Respondent in the appeals dismissed were represented by the same public lawyer, to wit, Los Angeles County Counsel, DeWitt Clinton.

Page A-4 attached shows (upper left) County Counsel DeWitt Clinton representing the "appellant" Public Administrator (as administrator of the Estate of William Harper).

Page A-3 attached shows (lower right) County Counsel DeWitt Clinton representing the respondent County of Los Angeles.

The appeals of 11/17/86 and 2/23/87 (consolidated under B024706) were filed in the wrongful death action by Carol Snow, as appellant Administratrix of the Estate of William Harper].

Then on March 20, 1987, County Counsel Trial counsel for defendant County of Los Angeles (respondent in the appeals) had Gordon Treharne, the Public

Administrator of the County of Los Angeles, appointed by the Court as estate administrator in place of Carol Snow.

Public Administrator Treharne was also represented by the Los Angeles County Counsel.

The County Counsel now represented both appellant and respondent.

County Counsel later, over objection of objectors, moved to dismiss the appeals on behalf of both its clients, appellant Public Administrator, and Respondent County.

The "local legal culture" [defined by the Cook County Special Commission to include judges] approved this traditional County Counsel usage of its powers.

The "local legal culture" approved this procedure even though it was

objected that the initial appointment of the Public Administrator on 3/20/87 was a result [on the face of the record] of an "ex parte communication" to a Court by County Counsel representing the county in the wrongful death proceeding.

The "local legal culture" approved this procedure even though the record showed the appearance of an agreement of County Counsel with a private party (who could have a private communication to the Court made through the County Counsel) so as to benefit the private party by not contesting such party's claim to social security and heirship monies with the private party in turn cooperating with the county to dismiss the appeals.

Why the introduction into routine appeals of the vast inherent power in a Courthouse system of a County Counsel who has to be a major player in the "local legal culture."

THE APEARANCE IS THE PROBLEM

The following is from the Petition for Review (of Objectors) to the Supreme Court of State of California:

" ... that County Counsel claims the right to be on both sides of the appeals is a matter of power, not the law.

"A close reading of the STATEMENT will show these are proceedings in the shadow of illegal drugs. Carol Snow and other **Mothers Against Drugs** long ago have

ascertained they have to achieve their reward from the integrity of having opposed this poison aimed at their children. They are always disdained by avant garde contemplations ...

"Mr. Treharne was a former deputy county counsel before he became Public Administrator. It is an office controlled by County Counsel. They in fact have enormous power. They have the power to achieve the degree of legal terror shown by their claim of right to be attorneys for appellant and respondent, and moving for a dismissal with this estate background.

"The exact truth is that the only thing Carol Snow has "thwarted" is the attempt of County Counsel to dismiss appeals to carry out a concealed trap on the

children, the estate, the wrongful death appeals, and the integrity of the appeal process which is the final protection for all our liberties. See: **The Petitioners** (Pantheon Press. 1966) By Loren Miller Senior. She doesn't think of it exactly that way, but her instincts are perfect, even if the spelling of "thwart" might throw her. She also assumes she will lose, as always. She has still refused to go along.

"Mr. Treharne was to resign 10/28/87 (STATEMENT P. 67. 2nd Civ. No. 031238 and a citation to him was quashed). It is of public record his full time task went to the already holder of the full time task of County Assessor. The County Assessor/Public Administrator can not be held **really** responsible with two full time jobs, which

has to be the point of having two full time jobs in one person. That leaves County Counsel in charge, and individual Deputy County Counsel as they may be assigned to appear, to verify a history they obviously are not capable of verifying - and so all are protected, shadows on the walls of an orator's caves.

"No good deed by a citizen who stands for civilization against drug traffickers goes unpunished in this proceeding? Why?...

"Why was that procedure not possible here - with the Smiths just handling the appeals, and not at peril about anything, and the County protected by having the P/A keep the money. Why such a grim determination of County Counsel to get rid

of the appeals without a hearing. Every now and then the County has to retry a case. It is just part of the process of litigation. {Why is County Counsel so driven, in every particular, in this particular case?}"

FACTS

William Harper died 2/20/81, in a vehicle accident, on a County of Los Angeles roadway in Malibu, California.

William had two children--Brahm (by Carol Snow)--and Zon (by Deborah Harper)--both minors at date of death. There was no normal marriage license as to either mother.

Carol became Guardian of Brahm, then qualified (on his behalf) as administratrix of decedent in Los Angeles Superior Court P663321. She did not claim as a spouse. Carol in 1983 assigned to her son any considerations she might receive from the death of William.

Deborah qualified as administratrix in Los Angeles Superior Court (West WEP16885). She claimed as a spouse, as well

as that Zon was a child of decedent.

The two probates were consolidated in West District. Carol and Deborah became co-administratrixes (1982). Deborah was residing on estate real property. Deborah was removed as co-administratrix in May, 1983 [Order of 5/27/83 of the Honorable Judge Choate]. Carol became sole administratrix on 6/29/83.

On June 6, 1983, the Honorable Judge Weiss nominated Public Administrator (also Public Guardian) Gordon Treharne as guardian of the minor Zon. If Mr. Treharne had accepted the nomination he would have become co-administrator with Carol, to maintain the balance.

Public Administrator Treharne declined to act.

Carol thus had sole responsibility to ready and sell the only estate asset (certain Malibu real property).

In 1984, by signed stipulation (including the stipulation of Carol and Deborah), a Judgment Determining Heirship was made [of 5/10/84 of the Honorable Judge Weiss]. The stipulation and order adjudicated Brahm and Zon as the sole heirs. It was also adjudicated that both Carol and Deborah withdrew any claim as putative spouse, and withdrew any claim to any rights as a spouse or putative spouse under Federal Social Security law (thus increasing the sums paid each minor by Social Security).

WRONGFUL DEATH ACTIONS

Carol filed a timely claim in 1981 against the County of Los Angeles for

damages for wrongful death, on behalf of the heirs of decedent.

Carol also filed on 11/13/81 (after claim rejection) a Superior Court action (against the County of Los Angeles,) as administratrix and co-administratrix on behalf of the estate of Harper, and as Guardian of Brahm. She named Brahm and Zon as heirs. She did not claim as a putative spouse. Carol named Zon and Deborah as defendants for jurisdictional purposes over all interested parties. Carol alleged the action was "on behalf of the surviving heirs."

Deborah also filed a claim against the County in 1981, for herself as a spouse and for Zon. She did not file for the estate or for the heirs or name Brahm. She

filed (after claim rejection and after Carol filed) a wrongful death action for herself as spouse and Zon as child of decedent, not naming the estate or Brahm.

The fact Deborah's action was filed after the filing by Carol had a relevant California case law result. The action filed first in point of time (Carol's action) on behalf of all heirs became the governing (only) action that counted.

The two actions (consolidated) were assigned in October, 1986, to the Honorable Judge Radin. Judge Radin ruled in pre-jury proceedings that in spite of the 1984 Judgment Determining Heirship of Judge Weiss (adjudging the two children as the only heirs) Deborah Harper could claim in the wrongful death proceedings as an heir as a

putative spouse (as well as Brahm and Zon.) A separate protective appeal from the heirship ruling of 11/10/86 of Judge Radin was filed by Carol as estate administratrix on November 17, 1986.

In December, 1986, there was a jury verdict judgment for defendant County (9 to 3). Trial counsel for the County was one Gardiner, a Deputy County Counsel. A separate judgment was entered by Judge Radin on 2/9/87 adjudicating Deborah as an heir as a putative spouse plus the two children as heirs. A protective notice of appeal by the estate administration was filed as to both judgments (2/23/87) by Carol at the conclusion of post-trial motions

The real property was sold with Court approval by the estate administration,

as of 2/27/87 for $180,000.00.

Deborah filed a claim with Social Security in February, 1987, as a putative spouse, on the basis of the 2/9/87 judgment of Judge Radin. [In 1989 Deborah filed a claim in the estate as a putative spouse based on this 2/9/87 judgment]

On 3/20/87 trial counsel Gardiner (for the County in the wrongful death action) appeared also at a Probate hearing to nominate the Public Administrator (who had declined to assist in 1983) to take over as administrator in place of Carol. This was at a probate hearing in West District (on a petition filed in behalf of Zon to remove Carol). No document in writing had been filed by County Counsel to announce any such intent, nor oral notice given.

FROM PETITION FOR REVIEW TO SUPREME COURT OF THE STATE OF CALIFORNIA - P. 4

"Re Original Ex Parte Communication Creating Void Orders: Whether or not all orders granting the Public Administrator any powers as estate representative should be declared void under the 14th Amendment because of the clear appearance of the original ex parte communication (of Deputy County Counsel trial attorney for the respondent county . . .) to Probate Judge Wolf prior to the hearing of March 20, 1987 (shown by Page One, R. T. 3/20/87 2nd Civ No. B 031238) . . . . at which hearing Mr. Gardiner (Counsel for respondent County also appearing on 3/20/87 as counsel for thePublic Administrator) requested the Public Administrator be appointed

special administrator and authorized to file a petition for general letters - such communication to Judge Wolf having been made in the absence of counsel of record for Carol Snow, and now resulting in the Public Administrator moving as appellant for dismissal."

FROM PETITION FOR REVIEW TO SUPREME COURT OF THE STATE OF CALIFORNIA - P. 14/ P/ 15.

"There is also the point chat Deborah Harper has filed a claim to Social Security benefits based on the 2/9/87 Judgment of Judge Radin adjudicating her as a putati spouse (CT. p. 9. 2nd Civil No. B 031238. Letter 3/5/87 of Social Security, advising of prospective decrease in benefits to

Brahm). The dismissal of the appeals will permit Deborah Harper to claim social security monies as a spouse contrary to her waiver in 1984 of any claim to social security monies as a putative spouse . . . . (C.T. p. 115. Order of 5/10/84 of Judge Weiss)

"Should a responsible administrator bring to the attention of a State Court that a State Court might erroneously cause Federal monies to be spent. It would seem appropriate for public lawyers (to Judges) to point this out to their Judges. In all events Carol Snow did note this to the Court in her Third Account (C.T. p. 208 . . . .): "A failure to appeal/object could be a violation of the Federal Criminal Code where the

Administratrix knows of a fact (the order of 5/10/84 of Judge Weiss) which could defeat the claim referred to . . .

"The County Counsel have never disclosed or discussed in any Superior Court or Appellate Court document the fact a change in estate heirship might result from the dismissal of the appeals. . . .

"The relief always asked by . . Carol Snow as to these two appeals (e.g. Motion filed 11/28/88 at page X) was only that the appeals should proceed to an adjudicated fate, whatever that might be. The elementary reason was

To protect the integrity of the Rules on Appeal from this positioning of County Counsel on both sides of the appeals

To protect the integrity of the Rules

on Appeal from the apparent private agreement of County Counsel with Deborah Harper - to cause the dismissal of the two appeals . . . . "

(To Page 24)

On 3/20/87 then the Public Administrator was appointed (over objections of Carol) as Special Administrator and ordered to file for general letters.

Public Administrator Gordon Treharne did file for general letters. Carol objected. One objection by Carol included a copy of the Bulletin article which is A-5. By order of 12/10/87 the Public Administrator was granted general letters and Carol was removed. Carol appealed this order 12/31/87. This appeal is pending.

In 1988 the Los Angeles County Public Administrator moved the Superior Court to approve the dismissal of the pending appeals of the estate.

Objections filed by Carol and Brahm included as a reason a violation of Article

XIV and an improper agreement of County Counsel with a private party re Social Security monies. Such violation of Article XIV and improper disposition of Social Securities monies was also in objections filed before the Court of Appeal and the State Supreme Court.

The Superior Court instructed (Order of 11/14/88) the Public Administrator to dismiss the appeals on behalf of the estate. Carol appealed the Order on 11/23/88 under California Probate Code Section 1240 (k).

The Public Administrator now filed a noticed motion as "appellant" to dismiss the appeals (A-4).

The County Counsel also filed a noticed motion to dismiss appeals (A-3).

Objections were filed by Carol and Brahm. The Court of Appeal dismissed the appeal(s) on 2/10/89. (A-2)

Petition for Review was timely filed, and denied May 3, 1989 (A-1).

REASONS FOR GRANTING THE WRIT

1. It is time this Court defined the lessons of Operation Greylord.

The attached articles are the argument.

A - 30 on Local Legal Cultures is the critical study of origin. Not hard in Chicago - where corruption has renewed itself since before the great fire. The color of a briefcase can be a sufficient ex parte communication in a traditional Cook County courtroom. The ex parte communication rules must amuse many. Exactly who is going to really and truly make each and all report each and every ex parte gesture. However, it is a beginning. On this record, in Los Angeles, ex parte communications

by County Counsel to judges, on behalf of the County, on behalf of private parties, are accepted, and savagely defended against the "incomprehensible" objector. There has not been a Deputy County Counsel or Judge who has faulted the right of County Counsel to use the various offices it represents to position themselves on both sides of these appeals, to their benefit and that of private party.

The emphasis by Objectors from the beginning to the use of Social Security monies by the County to achieve a benefit to the County has been ignored. No local public official indicates any error in the procedure, indicating how common it is.

The crucial Solovy wording is (A-9): " ... ex parte communication ... by rote and habit ... "

(A-15) " . . . . it is my thesis that the responsibility for Greylord falls directly upon lawyers. You cannot have corrupt judges without corrupt lawyers. It is my belief that lawyers corrupt judges; judges do not corrupt lawyers. The system is what lawyers make it."

Page A-21 notes, as to the ex parte Rules, and the described exception "for discussion between a judge and administrative personnel" that "This exception does not apply to other court-related personnel, such as state's attorneys or public defenders whose work is not administrative."

This would mean, if ever followed in Los Angeles, that ex parte contact by County Counsel with judges

re County litigation, or re the interest of third parties, would be proscribed.

The theory would be useful even in a local culture that can, as the auction, operate on the slightest of mannerisms.

It took a Greylord disaster to obtain even those "words" in Cook County. They should be adopted nationally. Observably Los Angeles public lawyers are not denying themselves the privilege of power. The judicial officers involved here seem unaware of the dangers of reciprocity of favor.

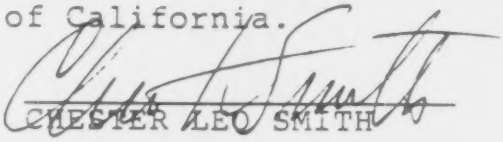
2. The use of Social Security monies in this manner gives this Court jurisdiction

This is a mistake by County Counsel.

CONCLUSION

A writ of certiorari should issue to review the judgment of the Supreme Court of the State of California.

Respectfully



CHESTER LEO SMITH

APPENDIX A

A 1

Office Of The Clerk
Supreme Court
State of California

May 3, 1989

Smith & Smith
12301 Wilshire Blvd.
#303
Los Angeles, Ca. 90025

Re: Harper
vs.
Los Angeles County of (et al)
2 Civil B024706
Los Angeles No. WEC 71259

The Court:

Petition for Review Denied

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 3 DATE: 2/10/89

Smith & Smith
12301 Wilshire Blvd.
303
Los Angeles, CA. 90025

RE: Harper, Brahamadanda and Carol Von Snow
VS.
Los Angeles, County of (et Al)
2 Civil B024706
Los Angeles NO. WEC71259

THE COURT:

MOTION TO DISMISS APPEAL GRANTED, APPEAL DISMISSED

2ND Civil No.
B 024706

IN THE COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA
DIVISION THREE

BRAHMADANDA HARPER, a minor by his Guardian ad Litem and Guardian, etc., et al.,;	)	[L.A. Superior Court Case Number WEC 071259 c/w WEC 71526
Appellant,	)	
vs.	)	
THE COUNTY OF LOS ANGELES,	)	
Respondent.	)	

MOTION TO DISMISS APPEAL;
SUPPORTING POINTS AND AUTHORITIES;
AND ALTERNATIVELY, REQUEST THAT APPELLANT
SECURE THIS APPEAL WITH REASONABLE SECURITY BOND.

DE WITT W. CLINTON, County Counsel
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COUNTY OF LOS ANGELES

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Attorneys for Public Administrator, Appellant

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 3

BRAHMADANDA HARPER AND CAROL VON SNOW, Plaintiff & Appellant,	WEC 71259 [WEC 71259 and WEC 71526 Consolidated and transferred to Los Angeles]
vs.	
COUNTY OF LOS ANGELES, et al., Defendants and Respondents.	Appellate 2ND Civil No. B 024706

MOTION FOR DISMISSAL AND ABANDONMENT OF PENDING WRONGFUL DEATH APPEAL WEC 71259; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF SHARON E. YACKEY IN SUPPORT THEREIN [Court Rule 19 (b)]

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, 2ND APPELLATE DISTRICT:

Sandra M. Davis, public Administrator, Administrator of the Estate of William Harper, hereby requests a dismissal of wrongful death action Superior Court Case No. WEC 71259 (which was consolidated to include WEC 71526) in Appellate 2nd Civil No.

A 5

SOLOVY AND KAUFMAN INVESTIGATE OPERATION GREYLORD*

The undercover investigation, called Operation Greylord, was conducted from 1980 through 1983 in Cook County Illinois by the U.S. attorney's office and the Federal Bureau of Investigation with the cooperation of local law enforcement officials. Indictments resulting from this unprecedented federal investigation into judicial corruption were announced at the end of December, 1983--there were a total of sixty-five, which led to convictions of eight judges, thirty-one lawyers, seven police officers, two court clerks, eight deputy sheriffs, and one court-appointed receiver. At a recent Chicago Harvard Law School Association Centennial event, Andrew Kaufman '54, professor of law, and Jerold

*Harvard Law Bulletin, Autumn 1987 (P.14)

Solovy '55, chairman of the Special Commission on Administration of Justice in Cook County and a partner with Jenner & Block, joined other members of the legal profession in discussing the effects of the Greylord scandal and ensuring investigations on legal ethics and practice.

COOK COUNTY AND THE LAWYER'S IMAGE--FOUR YEARS LATER

by Jerold Solovy '55

Offenses revealed by the Greylord trials have been as diverse as the defendants themselves. "Hustler" clubs were operated within the criminal branch courts and at traffic court, where attorneys paid off judges in exchange for case referrals; a supervising judge rented courtrooms to

corrupt judges and attorneys; and judges have been charged with receiving bribes for favorable rulings. Judges have been found to have taken bribes not only in minor cases involving parking tickets, for example, but in major traffic and felony cases. Armed robbery cases as well as weapons and narcotics violations have all been fixed for a price.

The corruption exposed by the Greylord investigation was comprised of more than isolated, individual acts of greed--it was organized and systematic. It was against this background that the Special Commission on the Administration of Justice in Cook County was formed by Chief Judge Harry G. Comerford of the Circuit Court of Cook County in August, 1984. The Commission consists of lawyers, judges, and laypersons-

-forty-three members in all. The Commission's charge is twofold. One to identify where the court system is most vulnerable to corruption and abuses, and to propose changes to prevent Greylord-type abuses from occurring; and two, to assess the performance of the court system and make recommendations to improve the efficiency and the effectiveness of the court.

In the first report (January, 1985) we proposed that the circuit court adopt a local rule interdicting ex parte communications. The Illinois Supreme Court naturally has a similar rule but the federal wire taps disclosed that they were nevertheless rampant in certain courts in Cook County, particularly the high-volume courts. Lawyers are capable of being Dr. Jekylls and Mr. Hydes or Ms. Hydes when it

concerns their behavior in federal and local courts, and this double standard is very apparent in Cook County. The lawyer who would appear in the federal court, who would never dream of approaching a judge for an ex parte communication, would do so by rote and habit in the circuit court. We were told that banning ex parte communications in high-volume courts was impractical and that the business of the circuit court would grind to a halt. The court's business has not ground to a halt. I'm not so naive as to believe that all ex parte communications have been stopped, but I think we have made good progress in that direction.

As the Special Commission proceeded through its work, we issued reports on the traffic court, divorce court, probation department and felony courts. We also

issued a report on the preliminary hearing and misdemeanor courts, recommended enforcement of anti-hustling rules and rotation of judges, and suggested distributing the court calls more evenly--a particular problem in high-volume courtrooms. The dockets are crowded, and some of the judges like to be done by 1:00 p.m. or 2:00 p.m. Justice is not administered under these circumstances. Each case takes thirty to forty seconds. Nobody knows what's happening in those courtrooms, and corruption easily thrives in that atmosphere. The presiding judge of the First Municipal District, Donald P. O'Connell, has done a tremendous job in ensuring that the courts work all day. Now that the courts start at 9:00 a.m. and quit at 5:00 p.m., we're doing a much better job

of administering justice in these high-volume courtrooms.

The special commission also petitioned the Illinois Supreme Court for a stricter rule of judicial financial disclosure. The Illinois Supreme Court responded quickly and adopted a very strong financial disclosure rule with public filing. Before the new rule was adopted, the judges did not file any meaningful disclosure forms publicly. I think this represents a very important step towards reform.

The Special Commission has also pushed hard for a system of merit selection. In Illinois we have always had elected circuit court judges. A 1979 Chicago *Sun Times* editorial is very enlightening on this subject. The editorial quotes a Chicago

alderman who says, in support of the elevation of an associate judge to a full judge: "He is sympathetic to the needs of an alderman or a committeeman. He understands his responsibility and does not forget from whence he came. I don't care what the bar says. Judge X is an alderman's judge." Now another alderman in good Chicago style said of another associate judge whom he wanted to be elevated to a full judge: "Years ago I had the pleasure to take him in. He has been at the organization's beck and call ever since."

A system of elected judges is a system in which judges can't run on a law and order ticket, so that their professional qualifications become irrelevant. An elective judicial process engenders a system of favoritism, and it is very easy to step

from favors to corruption.

Our study has disclosed that there has been hard core corruption for at least two decades in the Circuit Court of Cook County. How could this go on for so long? There was a conspiracy of silence which does not speak well of the legal profession. How did this happen? It happened for a twofold reason: first, because of misplaced societal values and second, because lawyers have forgotten their ethical obligations or have not had the courage to fulfill them. Judge John F. Grady, who is the chief judge of our federal court in Chicago, in sentencing an attorney who cooperated after he had been indicted, commented on the prevailing attitude towards cooperation. "We have a strange view of justice sometimes. We look with favor upon those

who know about wrongdoing and remain silent about it, who will not lift a finger to set it right. When in fact what is really involved is a rationalization for cowardice. The easiest thing to do is to do nothing."

In Cook County, lawyers did the easy thing. They did not get involved. Now, in part, looking the other way is understandable because of fear of retaliation by the establishment. After all the establishment did permit this system to continue. Yet the Code of Professional Responsibility demands that each of us report wrongdoing. I hope and pray that in Illinois we do have a heightened sense of professionalism and that we are no longer going to turn our backs.

The glare of Greylord has been on the judiciary--it has taken some hard

knocks. In this mess the role of the lawyer has been overlooked, and it is my thesis that the responsibility for Greylord falls directly upon lawyers. You cannot have corrupt judges without corrupt lawyers. It is my belief that lawyers corrupt judges; judges do not corrupt lawyers. The system is what lawyers make it.

In spite of these revelations about the Greylord scandal, I maintain that the justice system in Illinois is highly professional. One must look at the system in balance and perspective. The overwhelming majority of our judges are hardworking and honest, and the number of corrupt lawyers is small in relation to the organized bar as a whole. A lot of good has come out of Greylord; we have seen emerge a heightened sense of professionalism, a

reminder of who we are and what we are about. I hope and expect that the scandal and the ensuing investigation will lead to a renaissance of both judicial and legal ethics in Illinois.

SPECIAL COMMISSION ON THE ADMINISTRATION OF JUSTICE IN COOK COUNTY

Report to Chief Judge Harry G. Comerford of the Circuit Court of Cook County Concerning Ex Parte Communication from the Special Commission on the Administration of Justice in Cook County (February 16, 1984)

Introduction

The Special Commission on the Administration of Justice in Cook County has found that an atmosphere of informality pervades certain courtrooms within our Circuit Court and that this atmosphere helps to make it possible for ethical and legal violations to occur. This atmosphere of informality means that communications sometimes occur with judges outside of the presence of all parties of record. Such ex parte communications take part despite the existence of current restrictions found in the Rules of the Illinois Supreme Court.

Accordingly, the Commission hereby recommends that the Circuit Court of Cook County adopt the following rules in order to implement and to supplement existing ethical provisions. These proposals are in addition to any obligations imposed by law upon judges and lawyers with respect to unethical ex parte communications, such as the duty to report ethical violations to the Attorney Registration and Disciplinary Commission or the Judicial Inquiry Board. The object of the proposed rules is to regulate all communications between judges and counsel with respect to pending matters, not only discussions which constitute actual violations of ethical standards.

Discussion of the Proposed Rules

If adopted, Rule 1 would be an affirmation by the Circuit Court of a

fundamental principle of fairness in our legal system: that judges shall not receive communications about pending matters which exclude any party of record. A private communication to a judge about a pending matter is inherently unfair because it denies an opportunity for other parties to respond, to correct possible misstatements or possibly to agree with the communication. Even when a judge disregards an ex parte communication, the very fact that it was made can erode confidence in the judicial process. A lawyer who learns that the other side has talked to the judge may conclude that he, too, should meet the judge privately or suffer a disadvantage in that courtroom, and a layman may be left with a lingering distrust of local justice.

It is important to note that the

general prohibition of Rule 1 applies only to communications concerning pending matters. It does not restrict the participation by judges in social and community life, so long as discussions concerning pending matters do not arise in those contexts.

Proposed Rule 1 recognizes that communications with a judge outside of the presence of representatives of all parties of record are allowed by law in certain situations. For example, it may be necessary to hear an emergency motion for a temporary restraining order before all the other parties can be notified. The Commission also recognizes that the adoption of a general prohibition such as Rule 1 will not alone put an end to every ex parte communication. For these reasons, rule 2

specifies a response by court or counsel when an ex parte communication occurs for whatever reason. Contents of the communication must be brought to the attention of all parties within two court days, either in open court or in writing. We believe that this new disclosure requirement will inhibit certain communications from ever occurring and, if they do occur, will minimize any damage to the integrity of the court system.

Rule 2 allows an exception to the general prohibition for discussion between a judge and administrative court personnel such as clerks. This exception does not apply to other court-related personnel, such as state's attorneys or public defenders, whose work is not administrative.

Proposed Rule 3 allows an exception

to the general prohibition in civil cases to promote settlement, for the purpose of scheduling or for any other similar purpose. Again, however, there is an important safeguard: all parties of record must give their express consent.

Education and Enforcement

The Commission's recommendations go beyond the adoption of proposed rules. First, we note the practical difficulty that many judges in the Circuit Court face through lack of staff and facilities, and we urge that these deficiencies be remedied. In the federal court system the judges are insulated from lawyers and public through courtroom facilities and secretarial staff which minimize contact with judges. In the Circuit Court of Cook County there are many judges who do not even have chambers and

must answer their own telephones because of the lack of secretarial help. The Commission believes that these deficiencies have an unfavorable impact upon the public perception of the integrity of the judicial process, and we recommend that the Circuit Court be provided with chambers for every judge and the support staff to screen telephone calls.

We urge the court itself to adopt a broad program of education and enforcement of the proposed rules. Court officials should stress the importance of prohibitions upon ex parte communications in training programs for new judges and continuing educational programs for sitting judges. These programs should expand upon current efforts to provide practical guidance for the judges with respect to problems which

arise in this area. The Commission is confident that the Chief Judge and the Presiding Judges will take an active role in enforcement through written communications to all the judges and discussions of this fundamental ethical matter at meetings of particular divisions of the Circuit Court.

Bar associations, lawyers and members of the public also will have a crucial role in publicizing these important rules. Bar associations should understand that the atmosphere of informality which has prevailed in certain courtrooms will no longer be tolerated, and these groups should educate lawyers accordingly. The proposed rules are addressed to lawyers as well as judges, and their success will require the full cooperation of the bar.

Conclusion

These recommendations are the first which the Special Commission on the Administration of Justice in Cook county has proposed. Because of the urgency of the problem which these recommendations address, the Commission has released them at this time. The Commission expects to take further action from time to time on other urgent matters, as well as to prepare a final report at the conclusion of its work.

Proposed Circuit Court Rules Regarding Discussions at which Less Than All Parties of Record are Present

1. No judge shall permit and no lawyer shall engage in ex parte communications, unless allowed by law, in connection with any matter pending before said judge.

2(a) If an ex parte communication in connection with any matter pending before the judge occurs, the judge shall disclose the circumstances and substance of said communication to all parties of record at the next hearing in open court and, if a court reporter is available, on the record.

(b) If a hearing is not scheduled within two full court days of said communication, the lawyer who has initiated said communication shall promptly serve a written summary of the contents of said communication to all parties of record and

the judge.

3. The foregoing rules (1-2) do not apply to communications exclusively between a judge and court personnel whose function it is to aid the judge in carrying out his administrative responsibilities.

4. Independent of the foregoing, in civil cases with the express consent of all parties of record, a judge may communicate with fewer than all participants to promote settlement, for the purpose of scheduling or for any other similar purpose.

Commission's Comments to Proposed Rules

General Comments. The foregoing rules supplement and implement existing standards of conduct for judges and attorneys contained in Illinois Supreme Court Rules. Under these rules, every judge is ethically bound not to permit "private

or ex parte interviews, arguments or communications designed to influence his judicial action in any case" and every attorney is ethically bound not to communicate "as to the merits of the cause with a judge or an official before whom the proceeding is pending..." Article I, Rule 61(c)(16) and Article VIII, Rule 7-110. Both judges and attorneys are bound to avoid the appearance of impropriety (Article I, Rule 61(c)(4) and Article VIII, Rule 9-101) and to report to the proper authorities knowledge or evidence concerning the violations of such ethical rules by others (Article I, Rule 61(c)(10) and Article VIII, Rule 1-103)

Comment to Rule 1. Rule 1 permits communication with fewer than all parties during any set proceeding or other

proceeding allowed by law when all parties do not appear. It is not intended to prohibit a judge from hearing a set matter on a motion, status, pre-trial, progress, citation or any other call when fewer than all parties appear. Nor is it intended to prohibit a judge from taking whatever action he deems appropriate upon a properly presented emergency motion or any other similar matter allowed by law.

Special Commission on the Administration Justice in Cook County [IV Criminal Courts and Local Legal Culture (Pp. 69-70)] [February, 1987]

...There also are informal, unspoken rules and customs which shape courtroom behavior. The gaps between what the formal rules require, what the public expects, and what actually occurs is largely the product of the "local Legal culture."[109/]

The local legal culture is the product of several forces. At its core lies "courthouse workgroups"--the judge, policeman, bailiffs, clerks, public defenders, private defense lawyers, and prosecutors who work together on a daily

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109/ Local legal culture has been defined as "the practitioner norms governing case handling and participant behavior in a criminal court." T. Church, Examining Local Legal Culture, # Am. Bar Found. J., at 451 (1985).

basis. These groups work together to achieve common goals and develop their own values or norms.[110/] These workgroups, of course, do not operate in a vacuum; they are affected by other governmental agencies, reviewing courts, and political organizations as well as by broader social and economic forces. But it is through the workgroups that the local legal culture expresses itself and the goals and values of the courtroom participants may not be those stated in formal rules. As several of the Operation Greylord cases demonstrate, in the criminal branch courts at least,

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110/ Supra note 107, at 20-21, 24-28. See also A. Blumberg, The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession, 1 Law and Soc'y Rev. 15 (1967), reprinted in Crime and the Legal Process, at 233 (W. Chamblis ed. 1969).

these workgroups can develop highly deviant ways of operating--deviating not only from the formal rules and professional norms, but also from the requirement of the criminal law and ordinary morality.[111/]

The existence of a local legal culture does not set the court system apart from other large organizations; many institutions adjust their practices to suit the needs and interest of their members. In the view of one attorney, "judicial practice...reflects an accommodation of the interests of participants. In the abstract, this accommodation may not be ideal, but in

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111/ See, e.g., U.S. v. Murphy, No. 84-2389 and 85-1401 (7th Cir. July 19, 1985) and U.S. v. LeFevour, No. 85-2494 (7th Cir. Aud. 14, 1986).

context, it is at least acceptable.[112/] Yet, unlike other organizations, courts rely in large measure on conformity with formal rules of law to maintain their legitimacy. When actual practices significantly depart from the formal rules--and the public's expectations--those practices appear improper and the legitimacy of the system of justice is called into question.

In felony courtrooms, formal rules are disregarded for several reasons and in different ways. Some of the Court's rules are no longer relevant due to changed circumstances.[113/] Other rules are simply

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112/ M. Feeley, Court Reform on Trial, at 191 (1983) (quoting Raymond T. Nimmer).

113/ See, e.g., Cir. Ct. Cook Co. R. 15.5(d) (providing for an agency called "Witness Central" to monitor all matters assigned to the Criminal Division).

unenforced.[114/]

114/ See Cir. Ct. Cook Co. Rs. 15.1(h), 15.1(i). These rules providing for notification to the Presiding Judge concerning "ready" and "priority" cases are frequently ignored.

AMENDMENT XIV SECTION 1

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

.....

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION THREE, and know its contents.

I am the attorney of record for the PETITIONERS. The Petition and STATEMENT OF THE CASE state accurately the proceedings below. The Reasons for Granting the Writ are meritorious. Each and all of the documents referred to in the APPENDIX are true copies of original documents. CHESTER LEO SMITH is a member of the Bar of the Supreme Court of the United States. ANN SMITH is not now a member of such Bar.

Executed on July 30, 1989, at Los Angeles, California, by Chester Leo Smith. Who declares under penalty of perjury of

the laws of the State of California that the foregoing is true and correct.

CHESTER LEO SMITH

STATE OF CALIFORNIA

Executed on July 30, 1989, at Los Angeles, California by Ann Smith, who declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ANN SMITH

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action; my business address is 12121 Wilshire Blvd., Suite 1103, Los Angeles, California 90025.

I served the following document described as

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION THREE

On July 30, 1989, in this action by mailing true copies in the number as required, including three copies to each counsel of record, at a United States Postoffice in the State of California, enclosed in sealed

postage prepaid envelopes as stated on the attached mailing list. I declare I am a member of the Bar of the State of California and of the Bar of the Supreme Court.

I have mailed said copies to comply with the Rules of this Court, including rule 28.

7/30/89

CHESTER LEO SMITH

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